IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.171 OF 2002
WITH
NOTICE OF MOTION NO.3013 OF 2002
WITH
NOTICE OF MOTION NO.2762 OF 2003
WITH
NOTICE OF MOTION NO.3398 OF 2003
WITH
NOTICE OF MOTION NO.3490 OF 2004
IN
SUIT NO.2135 OF 2001

Sandeep G. Raheja ....Plaintiff
V/s.
Chandru L. Raheja & Ors. ....Defendants

Mr.Janak Dwarkadas, Senior Advocate, with Mr.P.K. Samdhani, Senior Advocate and Mr.Simil Purohit i/b. K.D. Abhichandani, for the Plaintiff.

Dr.Virendra Tulzapurkar, Senior Advocate, i/b. Wadia Ghandy & Co., for Defendant No.1.

Mr.Praveer Diwan, Advocate, with Ketan Gupta i/b. A.T. Agarwal, for Defendant No.2.

Mr.S.J. Pamnani, Advocate, for Defendant Nos.3 & 4.

Mr.F.E. DeVitre, Senior Advocate, with Z.T. Andhyarujina i/b. Humranwala & Co., for Defendant No.5.

Mr.C.U. Singh, Advocate, with Geetanjali Prabhu i/b. Ms.S.M. Lanjewar, for Defendant No.6.

Ms.Kunti Jhaveri, Advocate, with Jayesh Vyas i/b. Bilawala & Co., for Defendant No.7.

Mr.Chirag Balsara, Advocate, with Madhur Rai i/b. N. Shah & Himayatullah, for Defendant No.8.

Mr.A.Y. Bookwala, Senior Advocate, with Mr.H.N. Thakore and Ms. Purvi Chhatrapati i/b. Thakore Jariwala & Associates, for Defendant No.9.

CORAM : S.J. VAZIFDAR, J.
DATED : 16TH NOVEMBER, 2006.

ORAL JUDGEMENT :

1(A)(a) The reliefs sought by the plaintiffs in the above Notices of Motion fall into two categories. The first relates to the protection of the assets of the trust. It was not necessary to consider the same as all the parties have agreed to the appointment of a Receiver/Administrator in respect of the assets of the Trust. The second relates to restraint orders against Defendant no.9 in respect of 18 acres of land which belonged to the trust but was sold by Defendant no.8 to Defendant no.9 in exercise of its powers under an English mortgage. The plaintiff has challenged the entire process commencing for the resolution of the Board of Trustees offering the property as security for the dues of Defendant no.7 to Defendant no.8 to the sale thereof by Defendant no.8 to Defendant no.9

(b) I have in the paragraphs immediately proceeding the operative part of this order (Paragraphs 121 to 126) demonstratead how though I have refused restraint orders against Defendant no.9 on merits in fact :-

(i) the Plaintiffs interest qua the

property is fully protected,

(ii) if the Plaintifff establishes the case on merits his suit will stand decreed as prayed and,

(iii) the claim if decreed will be fully satisfied.

(B) Despite the same, as the matter was argued at length and as it pertains to a trust I have dealt with the rival contentions at length.

The Parties :

2. The Plaintiff and Defendant No.5 are the sons of Defendant Nos.6 and 1 respectively. Defendant Nos.3 and 4 are the sons of Defendant No.2. Defendant Nos.1, 2 and 6 are the Trustees of a private family trust called the "Raj Trust" (hereinafter referred to as "the Trust"). The Plaintiff and Defendant Nos.3, 4 and 5 are the beneficiaries of the Trust.

. In respect of the disputes concerning the Trust Defendant Nos.1 and 2 constitute the majority and Defendant No.6 is in the minority on the Board of

Trustees.

. Defendant No.7 Asiatic Properties Limited is a closely held company in which the shares are held by the parties herein through the members of their family / associates / sister concerns. Defendant No.8, Infrastructure Leasing and Financial Services Limited (ILFS) and Defendant No.9 Aman Spices Private Limited were subsequently impleaded for the reasons and in the circumstances I shall mention later.

The Plaint :

3. The suit as originally filed was for an order removing Defendant Nos.1 and 2 from the Trust and appointing two other persons in their place; for an order directing Defendant Nos.1 and 2 to deliver the trust properties and funds in their hands to the new trustees and Defendant No.6; for an order restraining Defendant Nos.1 and 2 from acting as trustees; for accounts on the footing of wilful default and payment by Defendant Nos.1 and 2 in accordance therewith and for an injunction restraining Defendant Nos.1 and 2 from dealing with or alienating the trust properties.

Amendments :

4. The plaint was amended four times on 14.08.2003, 17.11.2003, 02.12.2004 and 23.11.2005. The amendments were necessitated by reason of certain events that transpired or came to the notice of the Plaintiff from time to time after the suit was filed.

A. By the first amendment the Plaintiff impleaded Defendant Nos.7 and 8 and sought a declaration that a resolution dated 20.03.2001 passed by the trustees offering to give an immovable property belonging to the Trust as security to Defendant No.8/ILFS for the credit facility granted by Defendant No.8 to Defendant No.7 is null and void; for a declaration that the mortgage or security created by Defendant Nos.1 and 2 and/or the Trust over the said property is null and void; for a decree cancelling and setting aside the said mortgage, if any; for an order restraining Defendant No.8 from invoking the said mortgage for security; for a declaration that the mortgage or security is null and void and for an order restraining Defendant No.8 and Defendant Nos.1 and 2 from acting in furtherance of the mortgage.

B(i). By the second amendment the Plaintiff challenged the creation of an English mortgage dated 17.10.2003 by Defendant Nos.1 and 2 and/or the Trust in respect of the said property in terms and for reliefs similar to those urged and sought by the Plaintiff in respect of the said mortgage as aforesaid. The Plaintiff also sought an order restraining Defendant no.8/ILFS from acting on the English mortgage inter-alia by selling the said property in exercise of its power as an English mortgagee.

(ii). By the second amendment the Plaintiff also sought a declaration that the trustees are liable to divide and distribute the corpus of the Trust amongst the beneficiaries namely the Plaintiff and Defendant Nos.3, 4 and 5 in the proportion of 37.5% each to the Plaintiff and Defendant No.5 and 25% jointly to Defendant Nos.3 and 4. This amendment was sought as during the pendancy of the suit the date of distribution stipulated in the Trust Deed had arrived and the Board of Trustees had unanimously agreed to the said shares.

C. By the third amendment the Plaintiff impleaded Defendant No.9 and sought a declaration that the Deed of Sale/Conveyance dated 04.06.2004 executed by Defendant No.8 conveying the property to Defendant No.9 is null and void and for reliefs consequent thereto. In the alternative, the Plaintiff sought an order directing Defendant No.7 to pay to the Trust the value of the said property together with interest.

D. By the fourth amendment the Plaintiff introduced additional grounds to challenge the said sale of the property by Defendant No.8 to Defendant No.9. The Plaintiff inter-alia contended that Defendant No.1 was not a bona-fide purchaser of the property in as much as it purchased the property at the instance of Defendant No.1 and that Defendant No.9 is a front company of Defendant No.1.

The Five Notices of Motion :

5(a). The main reliefs in Notice of Motion No.171 of 2002 pertains to the appointment of a Court Receiver

of the Trust fund and all the properties of the Trust and to restrain Defendant Nos. 1 and 2 from acting as trustees and exercising any powers under the Trust Deed, for disclosure and for an injunction restraining Defendant Nos.1 and 2 from alienating the assets of the Trust.

(b). In Notice of Motion No.3013 of 2002, the Plaintiff sought an order restraining Defendant Nos.1 and 2 from alienating, disposing of, encumbering etc. the properties of the Trust in any manner.

(c). In Notice of Motion No.2762 of 2003, the Plaintiff sought similar reliefs as also an order in the alternative directing Defendant Nos.1, 2 and 6 to divide and distribute the corpus of the Trust fund amongst the beneficiaries. Further the Plaintiff sought an order restraining Defendant No.8 from invoking the mortgage or security created by Defendant Nos.1 and 2 and/or the Trust in respect of the suit property. The Plaintiff further sought an order restraining Defendant Nos.1 and 2 from acting on a resolution dated 28.03.2001 passed at the meeting of the Board of Trustees offering to give the suit property as security to Defendant No.8 and/or from doing anything in furtherance of the purported

mortgage in favour of Defendant No.8.

(d). In Notice of Motion No.3398 of 2003, the Plaintiff once again sought some of the aforesaid reliefs. In addition thereto the Plaintiff has sought an order restraining Defendant No.8 from exercising or acting in pursuance of the equitable mortgage created on 12.12.2001 and the English mortgage dated 17.10.2003 and from selling, encumbering or creating any third party interest in respect of the said property.

(e). In Notice of Motion No.3490 of 2004, the Plaintiff has sought an order restraining Defendant No.9 from selling, disposing of, encumbering or creating any third party interest in respect of the said property.

6(a). Defendant Nos.1 to 5 have agreed to the appointment of a private Administrator/Receiver of the Trust. Further the Plaintiff failed to obtain ad-interim orders restraining the sale of the said property to Defendant No.9. Thus by the time the hearing before me commenced Defendant No.8 in exercise of its rights under the said English mortgage by a deed of sale/conveyance dated 04.06.2004 sold the

property to Defendant No.9.

(b). In the circumstances, it is now necessary for me to consider the reliefs claimed only in Notice of Motion No.3490 of 2004. While doing so of course it will be necessary for me to consider the merits of the matter leading to the sale of the property by Defendant No.8 to Defendant No.9 for if the Plaintiff succeeds in respect of any of them he may well be entitled to the reliefs in Notice of Motion No.3490 of 2004. In other words, it will be necessary for me to deal with the rival contentions between the parties regarding the validity of the resolution of the Trust to create a security in favour of Defendant No.8, the creation of the equitable mortgage by the Trust in favour of Defendant No.8, the power granted by the Trust to Defendant No.8 to convert the same into an English mortgage, the conversion/creation of the English mortgage and finally the sale of the property by Defendant No.8 to Defendant No.9 in exercise of its powers under the English mortgage.

The Trust Deed :

7. One Mrs.Bindu Raheja, the aunt of the Plaintiff and Defendant Nos.3 to 5, being desirous of

making a voluntary settlement for the benefit of the said beneficiaries settled upon trust a sum of Rs.1,000/- under the Deed of Settlement dated 11.09.1985 made between her as the settlor and Defendant Nos.1, 2 and 6 as the trustees. The date of distribution under the Deed of Trust was 18 years from the date of the Deed i.e. 10.09.2003. The trustees had the power to advance the date of distribution. That power however has not been exercised. I will set out the relevant clauses of the Trust Deed at the appropriate places.

Facts :

8. It is necessary to set out not only those facts which are relevant to Notice of Motion No. 3490 of 2004. As observed ealier the only remaining dispute which I am called upon to decided pertains to the creation of the mortgages and the sale of the property by Defendant No.8 to Defendatn No.9.

9(a). The Plaintiff, Defendant No.6 and one Mrs.Durga S. Raheja as three of the nine Directors of Defendant No.7 addressed a letter dated 22.12.2000 to Defendant No.8 stating that at a meeting of the Board

of Directors of Defendant No.7, a proposal had been moved inter-alia to consider and offer the said land belonging to the Trust. These three Directors had opposed such a proposal. They set out their reasons for the same in detail. In paragraphs 6, 8 and 9(b) of the letter they stated as follows :-

> "6. Another proposal for rollover of credit facility of Rs.15.00 Crores stated to have been granted by you to the Company against the Club Cabana Project and to offer collateral security of a plot of land admeasuring about 18 Acres belonging to 'Raj Trust' as additional security for the rescheduling of the loan instalments was also passed by the other Directors by majority.
>
> 8. As regards giving collateral security of the land belonging to 'Raj Trust' (of which Mr.Gopal L. Raheja is one of the Trustees) as additional security for the loan granted by you to the Company, it is pointed out that no such proposal has been considered or approved by the Trustees of the Raj Trust. In any event it is beyond the rights and powers of the Trustees to give property of the Trust as security except in the course of regular business of the Trust, it is the bounden duty of the Trustees to act only for and in the interest of the Trust and to ensure that none of the properties of the Trust are diverted for any purpose other than those of the Trust. Any deviation from this solemn rule would tantamount to breach of trust and breach of duty and care expected of the Trustees towards the Trust and its beneficiaries.
>
> 9. .....
>
> (a). .....
>
> (b). If the other Directors offer any property belonging to Raj Trust as collateral security for or in respect of the loan granted by you to the Company and is accepted by you,

> then and in such event, you shall be liable for all costs and consequences arising from such ultra vires act; including to make good any loss suffered by the Trust and/or its beneficiaries."

(b). By a letter dated 26.12.2000 addressed to the trustees, Defendant No.7 stated that Defendant No.8 had indicated its willingness to consider the roll over of a credit facility of Rs.15 crores granted to it provided it could offer certain assets of its own or of its sister concern as additional security for rescheduling the repayment of the loan instalments. Referring to the resolution of the Board of Directors of Defendant No.7 approving the proposal mentioned above, Defendant No.7 requested the trustees to approve the offer of 18 acres of land situated at Shettigere Village, Bangalore as additional security. The letter ends as follows :-

> "We hereby undertake that you shall not be liable for payment of any loan sanctioned by M/s. IL & FS."

(c). Defendant No.8 replied to the said letter dated 22.12.2000 by its letter dated 29.12.2000 addressed to Defendant No.6. Defendant No.8 merely stated that the issues raised by Defendant No.6 are an internal matter of Defendant No.7 and may need to be resolved likewise.

(d). By a letter dated 04.01.2001 addressed to Defendant No.8 the Plaintiff, Defendant No.6 and the said Mrs.Durga S. Raheja reiterated the contents of the letter dated 27.12.2000 and stated that if despite the same Defendant No.8 went ahead with the said proposal, it would do so at its risk.

10. It is important to note that the only objection raised to the creation of security over the said land was on the ground that it would be beyond the powers of the trustees. This was the only ground stated in the correspondence that followed between the Plaintiff/Defendant no.6 and the other Defendants which I shall deal with.

11. By a notice dated 22.03.2001 issued under the signature of Defendant No.2, a meeting of the Board of Trustees was convened on 28.03.2001 to transact the following business :-

> "1. To review the working of the Trust.
>
> 2. To review the letter received from M/s. Asiatic Properties Limited and approve offering security of 18 acres of land situated at Shettigere Village, Devnahalli Taluk, belonging to M/s. Raj Trust and to pass suitable Resolution in this regard.
>
> 3. Any other business with the permission

of the Chair."

12. By a letter dated 27.03.2001 addressed to Defendant Nos.1 and 2, Defendant No.6 opposed the proposal of offering the property of the Trust as security for a loan to be taken by a third party and stated that the same was beyond the rights and powers of the trustees.

13. At the meeting of the Board of Trustees held on 28.03.2001, the following resolutions were passed:-

> "RESOLVED THAT the property of M/s. Raj Trust, admeasuring approximately 18 Acres, situated at Shettigera Village, Devanahalli Taluk, Bangalore, be given as collateral security to M/s. IL&FS for loan sanctioned by them to M/s. Asiatic Properties Limited.
>
> FURTHER RESOLVED THAT Mr.Arjun M. Menda and Mr.C.L. Raheja are hereby authorized to severally sign any such papers for offering security of the Trust property.
>
> Certified True Copy
>
> For Raj Trust
> Sd/-
> TRUSTEE."

. At the meeting Defendant No.6 admittedly protested the creation of the said security.

14. The minutes of the meeting recorded the fact that the letter dated 27.03.2001 was read by Defendant

No.6 at the said meeting. There is therefore no dispute that at the meeting Defendant No.6 did not vote in favour of the resolution.

15. By a letter dated 08.05.2001 addressed to Defendant Nos.1 and 2, Defendant No.6 recorded what transpired at the meeting of the Board of Trustees from 28.03.2001. He stated that he had reiterated his objections stated in his letter dated 27.03.2001. He further stated as follows :-

> "Approving of such a request is not only irregular but also beyond the rights and powers of the Trustees. It is the bounden duty of the Trustees to act only for and in the interest of the Trust and to ensure that none of the properties of the Trust are diverted for any purpose other then those of the Trust. Any deviation from this solemn rule tantamount to breach of trust and breach of duty and care expected of the Trustees towards the Trust and its beneficiary. This proposal should not have even been considered by the Trust."

16. The suit was filed on 18.6.2001. The Plaintiff and Defendant No.6 contended that as no documents were therefore sent to Defendant No.6 for signature they believed that in view of the protest by Defendant No.6 the Trust would not have created security in respect of the said property for the loans taken by Defendant No.7 from Defendant No.8. Thus when the suit was filed on 18.06.2001, the Plaintiff

had no reason or occasion to challenge the mortgage.

17. The Plaintiff has further contended that even thereafter neither the actual resolution dated 28.03.2001 nor the minutes of the meeting were made available to the Plaintiff. Thus Defendant Nos.7 and 8 were not impleaded in the suit.

18. On 12.12.2001, Defendant No.2 apparently deposited the title deeds in respect of the 18 acres of land with intent to create security by way of mortgage by deposit of title deeds with Defendant No.8. This is evidenced by a usual memorandum recording the deposit of title deeds also dated 12.12.2001. A special Power of Attorney dated 12.12.2001 was executed by the Trust in favour of Defendant No.8. The Power of Attorney was executed only by Defendant No.2 on behalf of the Trust. Clause 5 of the Power of Attorney reads as under :-

> "5. To finalize and execute mortgage deed containing such covenants, conditions, provisions and stipulations including granting of power to the mortgagee to sell the said property privately and without intervention of any Court of law, as IL&FS, in its sole discretion may deem fit."

19. By a letter dated 31.01.2003 addressed to Defendant No.2 on behalf of Defendant No.7 Defendant

No.8 refused to consider the alleged request by Defendant No.7 for restructuring the loan and recalled the same in the sum of Rs.17,42,52,118/-. Defendant No.8 threatened to invoke the security in the event of Defendant No.7 failing to repay the loan.

20. It appears that the Plaintiff and Defendant No.6 had to adopt proceedings in order to obtain the necessary documents especially those which call for consideration in this order.

21. The Plaintiff alleges to have discovered the creation of security from the Balance Sheet of Defendant No.7 for the year ended 31.03.2002. The Plaintiff thereafter took out Chamber Summons No.353 of 2003 for amendment to impugn the mortgage. From the affidavits-in-reply, the Plaintiff discovered that the mortgage was created not merely in respect of the land at Shettigere Village as stated in the resolution dated 28.03.2001 but also in respect of the land in Sadahalli Village. From the affidavits the Plaintiff also discovered the facts relating to the creation of the equitable mortgage on 12.12.2001. The Plaintiff therefore took out another Chamber Summons, being Chamber Summons No.525 of 2003, for amendment. Both the Chamber Summons were allowed by an order dated

24.07.2003.

22(a). At a meeting of the trustees held on 08.09.2003 the ratio of the benefits to be given to each of the beneficiaries was agreed upon unanimously. The Plaintiff and Defendant no.5 were alloted a share of 37.5 per cent each and Defendant nos.3 and 4 were together alloted the balance 25 per cent.

(b) Defendant No.6 however protested against the decision of Defendant Nos.1 and 2 to postpone the date of distribution viz. 10.9.2003 i.e. the date on which the Trust came to an end. It is not necessary for me to decide this issue at this stage even if I agree with the Plaintiff's contention that the distribution of the corpus ought not to be postponed. It would not be possible for the Court to do so at this stage as there are several impediments to the same even in practical terms. For instance the Plaintiff contends that he is entitled to distribution in specie. According to him it is neither necessary nor desirable to sell all the properties of the Trust and to distribute the sale proceeds thereof. This issue in turn raises its own complications. Until all the receivables / book debts are brought in, it would be difficult to apportion the properties in specie.

Thus the question of actual distribution must await a further proceeding at a later appropriate stage. I therefore do not intend expressing any opinion about the decision of the majority of the trustees to postpone the date of distribution.

23. In view thereof and in view of the Defendant's consent to the appointment of a Receiver/Administrator in respect of the Trust property, it is not necessary to deal with one of the main contentions of Defendant Nos.1 to 5 that the question of distribution must be decided only on the basis of the Trust forming a part of the southern entities of the Raheja family.

24(a). The Plaintiff took out Notice of Motion No.2762 of 2003. By an order dated 01.10.2003, the ad-interim application was rejected. The Division Bench by an order dated 04.11.2003, rejected the Plaintiff's Appeal, being Appeal No.899 of 2003, against the said order. The Appeal was filed on 10.10.2003. During the course of the hearing before the Appeal Court, the Defendants made a statement as recorded in the order that the equitable mortgage had been converted into an English mortgage on 17.10.2003. The Appeal Court without dealing with the contentions on merits requested the Single Judge to dispose of the

Motion expeditiously.

(b). The Plaintiff took out Chamber Summons No.1553 of 2003 to amend the plaint to challenge the English mortgage. The same was allowed by an order dated 11.11.2003.

25. By a letter dated 11.11.2003 addressed to Defendant No.7 and the Trust, Defendant No.8 in exercise of the power under the English mortgage called upon them to repay the loan, failing which it stated it would sell the said property. The Plaintiff took out Chamber Summons No.3398 of 2003 and made an ad-interim application seeking inter-alia to restrain Defendant No.8 from selling the property in exercise of its powers under the English mortgage. By an order dated 27.11.2003 ad-interim reliefs were rejected.

26. Ultimately Defendant No.8 sold the said 18 acres of land in favour of Defendant No.9 and executed a Deed of Conveyance in respect thereof.

27. This in turn necessitated the Plaintiff taking out Chamber Summons No.1008 of 2004 for impleading Defendant No.9 and challenging the sale by Defendant No.8 to Defendant No.9.

28. By an ad-interim order dated 19.07.2004 passed in Chamber Summons No.1008 of 2004, the Defendants were directed to maintain status-quo for a period of two weeks. The order of status-quo was continued upto 06.12.2004. By an order dated 29.10.2004 the Chamber Summons was allowed.

29. Thereafter Notice of Motion No.3490 of 2004 was taken out by the Plaintiff seeking an injunction against Defendant No.9 in respect of the said property.

30. On 04.12.2004 the Plaintiff took out Chamber Summons No.1793 of 2004 to amend the plaint by adding an additional ground challenging the transfer and sale of the said property by Defendant No.8 in favour of Defendant No.9.

31. By an order dated 18.01.2005 the Plaintiff's application for ad-interim reliefs in Notice of Motion No.3490 of 2004 against Defendant No.9 was rejected. The earlier status-quo order was continued for a period of one week.

32. By an order dated 19.10.2005 Chamber Summons

No.1793 of 2004 was allowed.

SUBMISSIONS :

33. Mr.Dwarkadas impugned every step leading to the sale of the said property by Defendant No.8 to Defendant No.9. This he did by the following submissions :-

(I). The Trust seeks to give as a security the property of the Trust not in connection with any business for or on account of the Trust.

(II). Though the resolution dated 28.03.2001 is only with respect to the land at Shettigere Village, the mortgage was also created in respect of the land at Sadahalli Village.

(III). The resolution in so far as it gives powers to two out of the three Trustees to sign the papers severally and also to the exclusion of the other trustees, the creation of the equitable mortgage, including the execution of the Memorandum of Deposit of the title deeds dated 12.12.2001 and the Power of

Attorney dated 12.12.2001 given by Defendant No.2 to Defendant No.8 are contrary to section 48 of the Indian Trusts Act, 1882.

(IV). There is no resolution by the Trustees empowering Defendant No.2 to confer a power upon Defendant No.8 to convert the equitable mortgage into an English mortgage.

(V). Even assuming that Defendant Nos.1, 2 & 6 had unanimously passed a resolution that Defendant No.2 would decide whether or not to permit Defendant No.8 to convert the equitable mortgage into an English Mortgage, the resolution would be bad in view of section 47 of the Indian Trusts Act, 1882.

(VI). In the alternative to submissions IV & V above, the exercise of discretion is not reasonable or in good faith.

(VII). The English mortgage is not attested by two witnesses and is therefore void in view of section 59 of the Transfer of Property Act.

RE: SUBMISSION I.

(I). The Trust seeks to give as a security the property of the Trust not in connection with any business for or on account of the Trust.

34. The submission is based on Clause 10(a) of the Trust Deed which reads as under :-

> 10(a). The Trustees may engage in or carry on any business or businesses for and on account of the Trust established by this Deed and may invest any part of the Trust Fund in such business or businesses. For and in course of such business the Trustees may enter into contracts for sale or purchase, borrow funds without security or on security of the Trust fund and at interest as they may think fit and engage and discharge managers, clerks and other staff and hire premises and open and operate Banking Accounts and take all legal and other proceedings and obtain and hold licences as may be necessary and apply for obtain such registration under such laws relating to trade, commerce or industry or

sales or purchase or otherwise as it may think fit.

35. Mr.Dwarkadas submitted that clause 10(a) of the Trust Deed permits the trustees to create security over the trust fund only in respect of funds borrowed for the business of the Trust. Clause 10(a) does not permit the trustees to secure funds borrowed by third parties. In the present case the security was created over the property of the Trust not for the funds borrowed by the Trust but to secure the amounts due by Defendant No.7 to Defendant No.8. The mortgage therefore and everything connected therewith is illegal as being contrary to the Trust Deed.

36. Mr.Dwarkadas's submission may have had some force in the absence of the first sentence in clause 10(a). The second sentence clearly limits the power of the trustees to borrow funds on security in the course of the business of the Trust. The creation of security for the borrowings of third parties simpliciter would be beyond the powers of the trustees as that is not the business of the Trust. The first sentence however makes all the

differences.

37. The first sentence of clause 10(a) permits the trustees to engage in or carrying on any business or businesses for and on account of the Trust. Business is a term of wide import. It would permit the trustees to do anything in connection with the business. It would permit the trustees to enter into transactions so long as such transactions bear some nexus or relation to the business authorised by the Trust Deed. It can hardly be contended that for the purpose of the business the trustees are not entitled to borrow funds. The corpus of this Trust started with only Rs.1,000/-. Surely none of the parties contemplated carrying on business of the nature actually carried on by the Trust by utilizing the initial corpus or any accretions thereto.

38. The second sentence however does not curtail the power conferred on the trustees by the first sentence. The trustees would, by necessary implications, have the power to do everything necessary to do business.

. In other words while the second sentence refers to the creation of security in respect of the

funds borrowed by the Trust, the first sentence does not contain any such restriction. It would be sufficient if there is some connection between the creation of the security and the business of the Trust. The right of the trustees to create security would not be merely in respect of the funds borrowed by the Trust.

39. It would be useful not merely while dealing with this submission but also while dealing with some of the other submissions on behalf of the Plaintiffs to note the nature of this Trust. Dr. Tulzapurkar, the learned senior counsel appearing on behalf of Defendant No.1, submitted that the Trust is not a simple Trust in the sense that the settlor did not create the Trust with the intention that the beneficiaries thereof would earn from the income from the property settled by her. Nor is it a case where the funds settled by the settlor can be utilized for the purpose of generating further funds. The Trust was created with a settlement of Rs.1,000/-. The enormous corpus which today constitutes the Trust fund was by no stretch of imagination created by the use or application of the settlement of Rs.1,000/-. It was created by the business activities of the Trust.

40. It is clear that the Trust was formed with the purpose and as a mode of doing business and that is exactly what has been done during its existence over the last eighteen years. The entire tenor of the Trust Deed and in particular clause 10 thereof establishes that the Raj Trust was a business Trust. It was created and constituted to do business albeit for the benefit of the beneficiaries. In other words the beneficiaries were to benefit by the profits generated by the business to be carried on by the Trust.

41. Mr.F.E. DeVitre, the learned Senior Counsel appearing on behalf of Defendant No.5, rightly relied upon the averments in the plaint which in fact admits this position.

(a). In paragraph 6(a) of the plaint it is stated that the Trust has since its inception been and continues to be mainly engaged in the business of dealing in land and real estate and execution of building construction contracts etc. In paragraph 8(a) of the plaint it is stated that the Trust is a part of what is known as the "K. Raheja Group" which comprises of various companies, concerns and entities

having business activities in various parts of India including South India. In paragraph 8(e) it is stated that the Trust is one of the southern companies / entities of the "K. Raheja Group."

(b). In paragraph 6(b) the Plaintiff has set out some of the projects that the Trust had carried out. The six items mentioned therein indicate the enormous business in the construction industry carried on by the Trust itself. It includes the construction and sale of 27,000 sq.ft. and 22,000 sq.ft. at two locations at Chennai, 95,000 sq.ft. at Coimbatore and 90,000 sq.ft. at Bangalore. In addition thereto the Trust has developed and sold plots in a scheme having an area of 250,000 sq.ft. at Bangalore.

(c). In paragraph 6(b) the Plaintiff has set out the details of some of the projects which have been partly completed and sold and others which are partly under development / completion at Bangalore. One of the projects comprises of 200 acres on which plots have been / are being developed and sold. Another such project comprises of a building with 35,000 sq.ft. construction.

(d). In paragraph 6(d) the Plaintiff refers to two projects namely a project known as the "Jade Club project" which comprises of a club with extensive facilities and a "Jade Farm House" which has been completed by the Trust at Bangalore.

(e). Paragraph 6(e) states that as per the Balance Sheet of the Trust for the year ended 31.03.1999 the book value of the projects under development / construction and held as a capital asset is about Rs.4.3 crores. The book value of the unsold premises of the project "Raheja Regent" comprising of construction of 35,000 sq.ft. in a building called "Raheja Regent" is not ascertainable from the Balance Sheet.

(f). Paragraph 6(f) states that the Trust has other assets worth Rs.6.07 crores and funds amounting to about Rs.66 lacs.

42. It is quite clear therefore that this Trust was constituted / created with the idea and intent and as a mode of doing business. This does not mean that the rights of the beneficiaries under the Trust Deed are any less than the rights of beneficiaries of any other trust. The nature of the Trust however

has a bearing on the manner in which it ought to be construed.

43. I am clearly of the view that such trusts ought to be construed in a commercial manner giving to them commercial sense and business efficacy. To construe such trusts otherwise would defeat the purpose of the Trust and the intention with which the Trust was created.

44. The question therefore is whether there was any nexus or relevance / connection between the mortgage and the business of the Trust. I think there was.

45. The answer lies in the affidavit-in-reply dated 20.11.2003 filed by Defendant No.1 and in particular paragraphs 11, 12 & 13 thereof. The Trust admittedly had undertaken the development of a project called the "Jade Gardens Project" at Sadahalli village, Bangalore. The development was in four phases and involved 223 acres of land of which the Trust held about 108 acres of land known as the "Jade Gardens Annex". The project envisaged a comprehensive integrated scheme for the development of private layouts with common

facilities including roads and recreational facilities for the benefit of the purchasers of the plots. One of the common recreational facilities to be provided was a club house known as the "Jade Club".

46. For the purpose of adding to the recreational facilities of the Jade Club, recreational area adjacent to it was reserved. In respect thereof thirteen separate Deeds were executed between the Trust and Defendant No.7 between 01.12.1995 and 10.10.1996. Under these deeds Defendant No.7 has undertaken the obligation to develop and maintain the club. Clause 4 of each of the agreements, reads as under :-

> "The Purchaser (i.e. Asiatic Properties Ltd) agrees to provide the recreational facilities on payment of annual subscription and facility charges as per rules framed from time to time to the purchasers/prospective purchasers of sites in the layouts, JADE GARDEN/JADE GARDEN ANNEXE and any other layout formed hereafter in the neighbourhood by the Land Holder (i.e. Raj Trust) and its nominee/s to the same extent and subject to the same terms and conditions specified in the agreements/ conveyances between the purchasers/ prospective purchasers of the Land Holder and discharge the Land Holder of the obligation of providing the aforesaid facilities."

47. It is pertinent to note that in the agreements

entered into by the Trust with the plot purchasers, the trust inter-alia in clauses 8(m) and 18 (as per the sample agreement tendered in the Court) expressly refers to the availability of recreational facilities to the owners inter-alia of such plots.

48. There is no dispute that the facility was accordingly provided by Defendant No.7. Thus in the agreements with the purchasers of the plots the Trust had agreed to provide the said recreational facilities. That obligation remained and continues to remain. By an internal arrangement between the Trust and Defendant No.7 it was agreed that Defendant No.7 would provide the said facility and in consideration thereof the said thirteen deeds were executed transferring the plots on which such facilities were to be provided to Defendant No.7.

49. It is true that for the purpose of the said development the loan was taken by Defendant No.7. The question however is whether the development of the recreational facilities had any connection with the business of the Trust. It clearly did. The business of the Trust so far as the said development was concerned was the development of plots and the sale thereof. As a part of the scheme / sale the

Trust agreed to provide the purchasers of the various plots recreational facilities. Whether it did so by constructing the same itself or through Defendant No.7 or through/by an arrangement with Defendant No.7 makes not the slightest difference. It was an obligation to the plot purchasers which the Trust undertook to discharge.

50. I would go a step further. Even if the agreements with the plot purchasers did not require the Trust to provide such a facility it would make no difference to this position. The trustees as a business decision could have decided to provide the facility even subsequently. This could be for a variety of reasons including the development of goodwill and the enhancement of the already undoubtedly high reputation that these concerns have throughout the country.

51. In the present case at least it is not for the Court to decide upon the commercial wisdom of or the business decision taken by the trustees. The only question today is whether the decision was within the power of the Trustees.

52. The discharge by the Trust of its obligations

to the plot holders of providing recreational facilities was undoubtedly a part of the business of the Trust. The development of the goodwill and reputation of the Trust as a business venture is also a part of the business of the Trust. It enures in the long run to the benefit of the business of the Trust. If in discharge of these business commitments/transactions the trustees created a security over the assets of the Trust for the discharge of its obligations by Defendant No.7 it cannot be said that they had acted beyond the scope of the powers of 10(a) and in particular the first sentence thereof.

53. Mr.Dwarkadas further submitted that in the facts and circumstances of the present case the decision was not bona-fide. He submitted that the thirteen Conveyances were executed by the Trust in favour of Defendant No.7 between 01.12.1995 and 10.10.1996. Clause 4 of the Conveyances reproduced above discharged the Trust of the obligation of providing the said facility. The construction of the facilities was completed in 1998. Therefore, it is submitted that by now the responsibility of the Trust to create the facility was over. Despite the same the mortgage was created to secure the loan

availed by Defendant No.7 from Defendant No.8 in respect of the said facilities.

54. It is important at this stage to draw a distinction between the powers conferred on the trustees and the manner of exercise of such powers by the trustees. This submission of Mr.Dwarkadas relates not to the existence of the powers but to the mode of exercise thereof by the trustees.

55. The existence of the powers of the trustees to create the security is not lost merely because the facility was already provided. The fallacy in Mr.Dwarkadas's submission arises from approaching the question of power in the context of disputes having arisen. The question of power must be decided on the construction of clause 10 and not on the basis of any disputes that may have arisen between the trustees. In other words the question is whether under clause 10 the trustees could have created the said security even though their obligation to provide the said facility to their plot purchasers had come to an end.

56. Once the distinction between the question of existence of power and the manner of exercise

thereof is clear the answer is obvious. The answer must be in affirmative.

57. Ultimately the facility was also to the benefit of the Trust as we have seen earlier. Questions of propriety, wisdom or even genuineness thereof are another matter. They are relevant to the sixth submission. I have already held that the trustees had the power to create the security over the trust property. That power would extend even after the trust has discharged its obligations to the third parties i.e. the plot purchasers. It would be pursuant to, in connection with and in view of the arrangement between the Trust and Defendant no.7. The same would be for a variety of reasons. These are however commercial, business decisions falling within the ambit of Clause 10(a).

58. Mr.C.U. Singh on behalf of Defendant No.6, supporting the Plaintiff further submitted that the Plaintiff and Defendant No.6 always contended that the creation of the said security was only for the benefit of Defendant No.7 and not for the Trust. There was no denial, he stated, to this in the correspondence. Nor was there an assertion either in the resolution or in the correspondence leading

thereto that the security was for the benefit of the Trust. Therefore, it is submitted that even if on a correct interpretation of clause 10(a) of the Trust Deed, the creation of the said security was permissible, the trustees ought not to have exercised their powers in the manner in which they did by creating the same.

59. This argument also suffers from the same fallacy as it confuses the existence of the powers with the mode of exercise thereof.

60. Mr.Dwarkadas had also submitted that the exercise of the powers is mala-fide as Defendant Nos.1 and 2 had guaranteed the repayment of the loans of Defendant No.7 to Defendant No.8. There was therefore a clear conflict of interest and duty. That may well be so but again this is relevant not to the question of the existence of power but to the manner of exercise of power.

61. The distinction is imperative as in the present case what I have to consider is an injunction which if granted would affect a third party. The submissions relating to the mode of exercise of power by the trustees may have had some

force if I was hearing this matter at the stage prior to the implementation of the resolution. Had I to consider today an application to restrain Defendant Nos.1 and 2/the Trust, from creating the mortgage, my approach could have been entirely different. The question then would have been whether the majority trustees had acted or were acting in breach of their obligations as trustees and not whether they have the power under the Trust Deed to so act. But that stage having passed these questions are relevant only to the liabilities of the trustees for breach of Trust. They are not relevant to the question of whether the trustees have the power to create the security.

62. Mr.C.U. Singh, further contended that in view of the last paragraph of the letter dated 26.12.2000 addressed by Defendant No.7 to the Trust the mortgage cannot be acted upon for the purpose of repayment of the loan. For convenience I quote the last paragraph again :-

> "We hereby undertake that you shall not be liable for payment of any loan sanctioned by M/s. IL & FS (Defendant No.8)."

63. The argument is not well founded. Indeed if Mr. Singh’s submission is correct it is difficult

to understand the purpose of the entire letter which was a request to the Trust to create a security over the said property as additional security for repayment of the loans granted by Defendant No.8 to Defendant No.7. To read the paragraph in the manner suggested by Mr. Singh would render the entire letter meaningless. It is not his case that Defendant No.7 agreed that despite the creation of the security the same would not be enforced.

64. I agree with Dr. Tulzapurkar that the words are not meaningless. A fair construction of this paragraph is that neither the Trust nor the trustees would be liable to pay any amounts in excess of the security.

65. Further even assuming that there was any such understanding it would not bind Defendant Nos.8 and 9. For admittedly their attention was not brought to this condition. Defendant No.8 admittedly was not a party to this letter. Nor was a copy of the letter sent to Defendant No.8. Moreover the documents executed between the Trust and Defendant No.8 do not contain any such stipulation.

66. In the circumstances I must conclude the

consideration of this submission by holding that the trustees had the power to create a security over the said property for securing the dues of Defendant No.7 to Defendant No.8.

RE. SUBMISSION NO.II

(II).Though the resolution dated 28.03.2001 is only with respect to the land at Shettigere Village, the mortgage was also created in respect of the land at Sadahalli Village.

67. The submission is neither fair nor well founded. In fact the contention that the Plaintiff and Defendant no.6 came to know that the said mortgage extended to the land in Sadahalli village only from the affidavit filed by the Defendant in Chamber Summons No. 353 of 2003 is not only unsustainable but is deliberately misleading.

68. It is true that the notice dated 22.03.2001 convening the meeting of the Board of Trustees and the Resolution dated 29.09.2001 refer to Shettigere Village and do not include Sadahalli Village. What is important to note however is that the notice and the resolution refer to 18 acres of land. It is

not the case of the Plaintiff and Defendant No.6 that the Trust owned 18 acres of land at Shettigere Village. The Shettigere and Sadahalli Villages adjoin each other. The Trust owned 14 acres of land at Sadahalli Village and only about 4 acres in Shettigere village.

69. The trustees including defendant no.6 as well as Defendant No.8 were at all material times aware that the property in question was 18 acres spread over these two villages and not merely the land in the village of Shettigere. Had it not been so, surely the Plaintiff and Defendant no.6 would have at the outset pointed out that the Trust did not own 18 acres of land at Shettigere village. They did not do so.

70. This makes it clear that neither the Plaintiff nor Defendant No.6 ever considered the property referred to in the resolution as being limited to four acres in Shettigere village. They throughout considered the said 18 acres owned by the Trust to have been the subject matter of the proposed security.

71. The present submission is only an after-thought. The submission is therefore rejected.

RE. SUBMISSION NO.III

(III). The resolution in so far as it gives powers to two out of the three Trustees to sign the papers severally and also to the exclusion of the other trustees, the creation of the equitable mortgage, including the execution of the Memorandum of Deposit of the title deeds dated 12.12.2001 and the Power of Attorney dated 12.12.2001 given by Defendant No.2 to Defendant No.8 are contrary to section 48 of the Indian Trusts Act, 1882.

72. The submission is based on the provisions of Section 48 of the Indian Trusts Act, 1882 which reads as under :-

> "**48. Co-trustees cannot act singly -** When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust, otherwise provides."

73. There is really no dispute as to the ambit of Section 48. The general rule is that it is necessary for all the trustees to join in the execution of the trust. This rule is subject of course to the instrument of of trust providing otherwise.

74(a) Mr.Dwarkadas relied upon the judgment of the Supreme Court in *Janakiram Iyer v. Nirekanta Iyer (1962) 1 Supp.SCR 206.* Paragraphs 18 to 20 state the ambit of Section 48 read as under :-

> 18.Section 48 of the Trusts Act provides that when there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides. It is thus clear that all acts which the trustees intend to take for executing the trust must be taken by all of them acting together. Therefore, there can be no doubt that 19.if the validity of the alienations effected by the trustees falls to be considered only in the light of Section 48 the fact that out of the three trustees only two have executed the sale deeds would by itself make the transactions invalid and would no convey title to the alienees. This position is not in doubt.
>
> 19. Lewin on "Trusts" has observed that in the case of co-trustees the office is a joint one. Where the administration of the trust is vested in co-trustees they all form as it were but one collective trustee, and therefore must execute the duties of the office in their joint capacity. It is not uncommon

> to hear one of several trustees spoken of as the acting trustee but the Court knows no such distinction; all who accept the office are in the eyes of the law acting trustees. If anyone refuses or e incapable to join, it is not competent for the others to proceed without him, but the administration of the trust must in that case devolve upon the Court. However, the act of one trustee done with the sanction and approval of a co-trustee may be regarded as the act of both. But such sanction or approval must be strictly proved 5. If one of the trustees refuses to join in the execution of the trust, under the Indian law Section 34 of the Trusts Act provides for the remedy. The other trustee can apply to the Court as contemplated by Section 34 and the trust may accordingly be executed.
>
> 20. As we have seen Section 48 contemplates that its provisions will not apply where the instrument of trust otherwise provides. In other words, if a trust deed under which more trustees than one are appointed expressly provides that the execution of the trust may be carried out not by all but by one or more then of course the matter would be governed by the special provision of the trust deed. The argument urged by the learned Attorney-General is that Clause 23 of the trust deed in suit makes such a provision. Both the Courts below have rejected this plea but it is urged that the said conclusion is based on a misconstruction of the relevant clause.

(b). The Supreme Court in paragraph 21 construed the clause that fell for consideration in that matter.

The translation of the clause furnished by the Attorney General which was accepted by the Court reads as under :-

> "In connection with this estate, in all trustees to be taken the some were unanimously or according to the decision of the majority shall act".

(c). In respect of this clause, the Supreme Court held in paragraph 21 as under :-

> "21. Taking the translation supplied by the learned Attorney-General it is clear that what this clause requires is that the three trustees shall act, and it provides that they shall act according to the decision which may be reached either unanimously or by majority. You three, that is to say the three trustees, is the subject of the predicate shall act; and the words between the subject and the predicate indicate how the decision has been reached. Reading the clause as a whole it is difficult to accept the argument that this clause allows two of the three trustees to act without joining the third trustee in the actual action to be taken in the execution of the trust. It is not necessary under the clause that in the matter of executing the trust every decision must be unanimous. The clause recognises that in some matters decision may be by majority; but nevertheless it requires that once a decision is reached either unanimously or by majority, in giving effect to the decision and in taking any given action in the execution of the trust all the three must act. Thus read

> this clause conforms to the statutory provisions contained in Section 48 of the Indian Trusts Act and is not intended to provide for an exception to the said provisions at all. It i urged that if no departure was intended to be made from the principles laid down in Section 48 the clause need not have been added at all. This argument is wholly inconclusive. There are several other clauses in the trust deed which also bring out provisions corresponding to the relevant provisions of the Trusts Act and this argument may apply to the said clauses as well. The authors of the trust, while creating the trust, have made elaborate provisions in respect of the several matters concerning the execution of the trust, and the whole scheme of the trust deed is consistent with the operative Clause 23 in that it seems to require all the trustees to act together even though the decisions which they seek to give effect to may have been majority decisions and not unanimous decisions. Therefore, in our opinion, the Courts below were right in holding that Clause 23, like the main provision of Section 48, requires that all the trustees should have joined in the execution of the sale deeds in question. That being so, Exs. B-94 and B-37 which are respectively executed in favour of Defendant 14 and Defendant 13 are invalid and can pass no title to the alienees on the ground that only two out of the three trustees have executed them (Vide: Lala Man Mohan Das . Janki Prasad 6)."

75. The judgment was followed by the Supreme Court in *Shanti Vijay & Co. v. Princes Fatima*

Fouzia, (1979) 4 SCC 602. The observations of the Supreme Court in this case are to the same effect. In addition, the Supreme Court held as under :-

> "27. It follows as a necessary corollary, that where there are several trustees they must act unanimously in making a sale or a contract of sale, unless it is provided otherwise by the terms of the deed. In exercising the power of sale, as in the exercise of other powers a trustee cannot, therefore, properly delegate the performance of the acts which he ought personally to perform. Although a trustee may listen to the opinions and wishes of others, he must exercise his own judgment. Thus a trustee for sal of property, cannot leave the whole conduct of the sale to his co-trustees. The reason for this is that the settlor has entrusted the trust property and its management to all the trustees, and the beneficiaries are entitled to the benefit of their collective wisdom and experience.
>
> 31. It was not disputed that a trustee cannot delegate his functions except as provided in Section 47, which reads: A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) t e beneficiary, being competent to contract, consents to the delegation.
>
> 32. Section 48 is a corollary of Section 47 for, if the trustees

> cannot delegate their duties, it follows that they must all personally perform those duties, and not appoint one of themselves to manage the business of the trust; for the settlor has trusted all his trustees, and it behoves each and every one of them to exercise his individual judgment and discretion on every matter, and not blindly to leave any questions to his co-trustees or co-trustee."

76. The question therefore is whether the deed of trust contains a provision authorizing the majority of the trustees to execute the trust.

77. Clause 18 of the deed of trust in my view provides that the majority of the trustees may execute the trust. Clause 18 reads as under :-

> "18. In the event of there being more than one trustee, in all cases, or difference of opinion amongst the Trustees touching the execution and exercise of any of the trusts, powers and provisions herein declared and contained or the true intent meaning and construction of any of the clauses hereof or otherwise in relation to the premises, the opinion of the majority of the Trustees shall

prevail and be binding and conclusive

. and in case the Trustees shall be divided in opinion, the majority of the Trustees shall be ascertained and decided by the casting vote of the senior most Trustee hereof

. and any Trustee hereof who shall dissent from any execution or exercise of any such trusts, powers or provisions shall nevertheless concur in executing or signing any documents or doing any act necessary for giving effect to the execution or exercise of any of the trusts, powers or provisions by the majority of the Trustees without being responsible for loss."

. There are three parts to Clause 18 of the deed of trust. The clause reads as one continous sentence but I have set it out in its three parts for convenience.

78. The first part does not support the Defendants' case. It merely provides that the opinion of the majority of the trustees would prevail and be binding

and conclusive. If the clause were to end there it would not dispense with the requirements under Section 48 that all the trustees must join in the execution of the trust. The second part of Clause 18 which provides for the contingency of the trustees being divided in their opinions is not relevant for this matter.

79. It is the third part which in my view permits the majority trustees to act in the execution of the trust.

80. The third part, Mr.Dwarkadas submitted only reinforces the requirement of Section 48 as it provides that the dissenting trustees shall nevertheless concur in executing or signing any documents or doing any act necessary for giving effect to the execution or exercise of any of the trusts powers or provisions. I am unable to agree.

81. If Mr.Dwarkadas’s contention is accepted, it would render the third part of clause 18 superfluous. It is important to note that clause 18 provides that dissenting trustees shall nevertheless concur "in" executing or signing any documents or doing any acts. Clause 18 does not provide that dissenting trustees

shall nevertheless concur "by" executing or signing any documents".

82. The contradistinction is clear and crucial to a proper construction of Clause 18. Thus if Mr. Dwarkadas's submission is correct, Clause 18 would have used the expression "concur by" and not "concur in" . This is further supported by an equally significant part of clause 18. The clause goes on to provide that the dissenting trustees shall nevertheless concur "in" executing or signing any documents or doing any act etc. "by majority of the trustees".

. It would be useful to paraphrase the third part of clause 18 for clarity thus :-

. "..... any trustee ..... who shall dissent from any execution ..... of any such trusts; power....shall nevertheless concur in executing or signing any documents ..... necessary for giving effect to the execution ..... by majority of the trustees....."

. Thus the physical act of executing or signing the documents may be performed by the majority

trustees and in respect of such act the dissenting trustee shall concur. The concurrence of anything may be in any manner. The use of the expression "concur in" and not the expression "concur by " militates against Mr.Dwarkadas's submission. This is further clarified by reference to the "execution ....." by the majority of the trustees".

83. If the expression "concur in" is substituted with the expression "concur by" it would violate the contruction of the entire sentence disrupting the phrase "by majority of the trustess". To avoid the same in the event of the expression "concur by" being used the word "by" in the phrase "by majority of the trustees" would have to be substituted with the word "with".

84. The trust deed read as a whole supports the construction placed thereon by Dr.Tulzapurkar. The deed of trust was executed at the time when there was no dispute between the trustees and the beneficiaries. It was, as I have observed earlier, a business trust. The extensive powers conferred upon the trustees indicate the confidence reposed in them by the settlor. The confidence is relevant.

. For instance under clause 6(a) the trustees were empowered until the date of distribution to pay the income to the beneficiaries or to any one or more of them to the exclusion of the others, for their use or benefit and in such proportion and in such manner as the trustees thought fit in their absolute discretion. Clause (b) is even more significant as on the date of distribution the trustees were authorized to divide and distribute the corpus to and among the beneficiaries or one or more of them to the exclusion of the others in such manner as the trustees in their absolute discretion thought fit. The trustees have been give wide powers regarding the mode of doing the business.

. A combined reading of all the clauses coupled with the fact that this is a business trust indicates to my mind that the settlor did not intend or desire that the trustees should approach the Court every time there was a dissent to a transaction from one of the trustees. Indeed clause 18 read as a whole indicates the contrary. The settlor has strained in the latter part of Clause 18 to ensure that the business of the trust goes on without there being any impediment at every stage by the mere dissent from one of the Trustees to a transaction.

85. Mr.Dwarkadas relying upon Corpus Juris Secundum Vol. X-C page 21 submitted that a clause in a deed of trust ought to be construed in favour of the beneficiaries and against the settlor. I do not see any force in the contention that the construction placed on Clauses 10 and 18 of the Deed of Trust by Dr. Tulzapurkar would be against the interest of the beneficiaries or for that matter in favour of the settlor. The error I believe has arisen again in viewing this clause in the context of disputes having arisen between the parties. The disputes however are not between the beneficiaries on one hand and the Settlor or the trustees on the other alone. The disputes are between the beneficiaries inter-se as well. In such circumstances, the rule may not even apply. Indeed it can be argued with equal force by defendant nos.3 to 5 i.e. the other beneficiaries that the construction placed on these clauses by Mr.Dwarkadas is against the interest of the beneficiaries. For the same would greatly hamper the working of the trust, a business trust, by a dissenting trustee at every stage in the execution of the trust. Indeed, the interpretation placed by Dr.Tulzapurkar would advance the aim of the Settlor in constituting the trust which I have described as a

business trust by accepting Dr. Tulzapurkar's interpretation thereof. Further this interpretation would also cause the plaintiff no harm for it will always be open to him to challenge the decision of the majority by making an appropriate application to the court.

86. In the circumstances, it must be held that clause 18 constitutes an exception to the general rule and permits the majority of the trustees to execute the trust.

87. Mr.Balsara contended that even if it is held that the trustees had no power to create the said mortgage the rights of Defendant No.8 could not be affected as that would be an internal issue with which Defendant No.8 is not concerned.

88. I am unable to agree. Had I come to the conclusion that trust deed did not authorize the creation of the mortgage or that the resolution did not authorize the creation of the mortgage, the mortgage in favour of Defendant No.8 would have been invalid. For in that event the mortgage itself would have been unauthorized and therefore void.

89. This brings me to the second limb of this submission viz. the challenge to the creation of the equitable mortgage.

90. It is important to note at the outset that at the meeting of the Board of Trustees held on 28.3.2001 it was resolved that the said property "be given as collateral security" to Defendant No.8 for the loan sanctioned by it to Defendant No.7. There was no restriction regarding the nature of the security. Further the resolution authorizing Defendant Nos.1 and 2 to severally sign any such papers for offering the security of the trust property did not delegate any decision making power. The further resolution was only to enable the implementation of the specific resolution to give the property as collateral security.

91. Pursuant thereto the title deeds were deposited by Defendant No.2 with Defendant No.8 to create an equitable mortgage over the said property. The creation of an equitable mortgage does not require the execution of any writing. The memorandum itself did not create the equitable mortgage. The memorandum only evidenced the same. The physical act of

depositing the title deeds was only a ministerial, act to effectuate the deceision already taken by the Board of Trustees to create the mortgage. Once this distinction is noted it is clear that there is no infirmity so far as the equitable mortgage is concerned. This is permissible under the explanation to Section 47 of the Public Trusts Act which reads as under :-

> **"47. Trustee cannot delegate :-** A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.
>
> **Explanation."** The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

. Prima-facie the delegation of this duty is consistent with the provisions of Section 47(a) and (b) of the Indian Trusts Act.

92. Even assuming it was necessary for the

majority trustees in exercise of powers under clause 18 to create an equitable mortgage, there was no infirmity in Defendant No.2 having done so as the resolution itself evidences exercise of power by Defendant Nos.1 and 2 under clause 11(b) of the deed of trust which permits the trustees to delegate any power which can lawfully be delegated to any person. Clause 11(b) reads as under :-

> 11. Without prejudice to the generality of the provisions herein contained the Trustees shall have the following powers :-
>
> (a). .....
>
> (b). To delegate any power as it can lawfully delegate to any person and to execute such power of attorney as it may think fit for the purpose;

93. The third limb of the submission viz. the challenge to the execution of the Power of Attorney by Defendant no.2 must be rejected for the same reason.

94. Thus the provisions of the Indian Trusts Act read with the provisions of the trust deed, prima-facie do not indicate any infirmity either in the creation of the equitable mortgage or in the

execution of the Power of Attorney or in the creation of the English mortgage.

RE: SUBMISSION NO IV

(IV). There is no resolution by the Trustees empowering Defendant No.2 to confer a power upon Defendant No.8 to convert the equitable mortgage into an English mortgage.

95. The question does not really arise. The resolution does not restrict the nature of the security. It merely specified / identified the property over which security was created.

96. At the said meeting, the trustees resolved that the said property be given as collateral security. The nature of the collateral security was not restricted. I am inclined however at least at this prima-facie stage to read the resolution to give it business or commercial efficacy. So read, it is obvious that the nature of the security contemplated was to permit the creditor to enforce the same by selling or by bringing the property to sale and to appropriate the sale proceeds towards its dues. The

plaintiff and Defendant no.6 quite clearly considered the resolution in this manner. It was not contended by the Plaintiff or Defendant No.6 that they understood the resolution as permitting only a possessory lien. This was not even alleged in any of the pleadings or correspondence.

97. The power of attorney did not delegate any decision making power of the trustees regarding the security. The power of attorney merely gave effect to the resolution by which it was resolved to offer the property as security. The decision of the majority trustees was not limited to the creation of any particular type of security. The Power of Attorney accordinly gave effect to this decision by conferring upon Defendant no.8 the right to decide the type of mortgage it desired. In other words the Power of Attorney instead of spelling out the different types of mortgages itself gave Defendant no.8 the option of the nature of security. The decision of the Trustees was to give Defendant no.8 security over the property in any form. It is as if the resolution itself spelt out each type of mortgage. The power of attorney only enabled Defendant No.8 to carry out the clerical/ministerial task of creating the security. Even otherwise

prima-facie at least this too is supported by clause 11(b) of the trust deed.

98. The resolution permitted the creation of any type of security. Pursuant thereto the majority trustees decided to create an equitable mortgage. They further decided to permit Defendant No.8 to convert the same into an English mortgage. They could well have created an English mortgage themselves in view of the resolution not having restricted the type of security. The mere fact that they empowered Defendant No.8 to merely carry out their decision to create the English mortgage would not be contrary to any of the provisions of the Trust Act. In other words, Defendant No.8 by virtue of the power of attorney was empowered merely to take the procedural steps necessary to give effect to the decision of the trustees.

RE. SUBMISSION NO.V

(V). Even assuming that Defendant Nos.1, 2 & 6 had unanimously passed a resolution that Defendant No.2 would decide whether or not to permit Defendant No.8 to convert the

equitable mortgage into an English Mortgage, the resolution would be bad in view of section 47 of the Indian Trusts Act, 1882.

99. Most of what I have held in respect of Submission No.IV would apply to this submission.

100. The resolution endorsed the decision of the Trust to give the said property as security. The resolution does not constitute a delegation by the trustees of their decision making power regarding the creation of the security. The resolution by its own force creates the security. The power of attorney issued in favour of Defendant No.8 merely permits Defendant No.8 to execute the necessary documents for the purpose of converting the equitable mortgage into an English mortgage. Neither the resolution nor the power of attorney conferred a right upon Defendant No.8 to decide as to the nature of the security that it was entitled to. At best it could be said that the trust permitted Defendant No.8 at its option to convert the equitable mortgage into an English mortgage. That does not amount to the Trust having delegated its power to decide upon the nature of the security to Defendant

No.8.

RE. SUBMISSION NO.VI

(VI). In the alternative to submissions IV & V above, the exercise of discretion is not reasonable or in good faith.

101. In the alternative to the above propositions, Mr.Dwarkadas submitted that the exercise of discretion by the trustees was neither reasonable nor in good faith and constitutes a breach of trust. For that reason too he submitted that the creation of the mortgages is void and the corresponding sale of the property by Defendant No.8 to Defendant No.9 is also void.

102. Mr.Bookwala in the first instance submitted that even if the Court was to take a view against Defendant Nos.1 and 2, the mortgages in favour of Defendant No.8 and accordingly the sale of the property by Defendant No.8 to Defendant No.9 would neither be invalid nor improper. This he submitted was in view of the fact that the property had been purchased by Defendant No.9 not from the trust but from Defendant No.8 who in exercise of its powers under the English

mortgage became an owner of the property on 17.10.2003 i.e. the date of the English mortgage.

103. This defence was in turn sought to be met by Mr.Dwarkadas and Mr.C.U. Singh, by relying upon Sections 63 and 64 of the Indian Trusts Act.

104. The issue would require a consideration of the ambit of the expression "inconsistent with the trust" in Section 63. It would also require a consideration of the ambit of expression "such a transferee" in Section 64(b). In the facts and circumstances of the present case, it is not necessary to determine the scope of Sections 63 and 64 in this regard. I will presume that the expression inconsistent with the trust would include within its ambit breach of trust. I will also presume that a transferee from a transferee with the notice of breach of trust would not derive valid title. I am unable at this interlocutory stage, to accept that either Defendant No.8 or Defendant No.9 were aware of the alleged breach of trust on the part of Defendant Nos.1 and 2.

105. Mr.Dwarkadas relied upon two sets of facts in support of the submission under consideration.

Firstly, he submitted that the creation of the mortgage to secure the dues of Defendant No.7 to Defendant No.8 was motivated and accordingly in breach of trust as Defendant No.1 was a guarantor in respect of the dues of Defendant No.7 to Defendant No.8. Secondly, he submitted that Defendant No.9 was only a front for Defendant No.1. Defendant No.9 purchased the property at a gross undervaluation and accordingly it is Defendant No.1 who has benefited by the sale.

106. Defendant No.1 was admittedly a guarantor in respect of the dues of Defendant No.7 to Defendant no.8. Creation of the mortgages to secure such dues could well be challenged on the ground that there was a conflict of interest and duty as far as Defendant No.1 is concerned. However, there is nothing to indicate that either Defendant No.8 or Defendant No.9 were aware of the same. I have dealt with in considerable detail the correspondence between Defendant No.6 and Defendant No.8 in regard to the creation of the security over the said property. It is significant to note that this aspect pertaining to breach of trust was never brought by Defendant No.6 to the notice of defendant No.8.

107. I must in fairness to Dr.Tulzapurkar add that the fact that there may have been a conflict of

interest and duty in the case of Defendant Nos.1 and 2 would not itself indicate any mala-fides or mala-fide intention on their part in creating the mortgages. Dr.Tulzapurkar had at the outset on behalf of Defendant No.1 to show his bona-fides and without prejudice to his contention that there was no breach of trust on the part of Defendant No.1 made a statement that as far as Defendant No.1 was concerned, he had no objection to the appointment of a Receiver in respect of the assets of the trust. This statement was made at the outset of even the Plaintiff's argument. Mr.Diwan also agreed to the order on behalf of Defendant no.2. In view thereof it was not necessary to decide the rival contentions between the parties regarding the allegations of breach of trust or mala-fides on the part of Defendant Nos.1 and 2 as trustees. Even assuming that there was any conflict of interest and duty as aforesaid it could well be explained as a matter of perception of Defendant Nos.1 and 2. This perception would justifiably arise if Defendant Nos.1 to 5 were able to establish their case regarding the trust forming part of the southern entities and accordingly a global accounting in respect thereof being required to be undertaken. Having decided not to consider these questions in view of the parties having agreed to the appointment of an Administrator, it would be unfair to

draw an inference against the trustees.

108. This brings me to the second aspect urged by Mr.Dwarkadas that Defendant No.9 is but a front for Defendant No.1.

109. The averments in this regard are in paragraph 25(k) of the plaint. The Plaintiff contends that the Director of defendant No.9 is a friend and close associate of Defendant No.1. That however by itself would not establish that Defendant No.9 is a front for Defendant No.1. There is nothing unusual in the Directors of other companies being friend of defendant Nos.1 and 2.

110. Further the plaintiff has also relied upon the proceedings in Company Application No.274 of 2004 in Company Petition No.43 of 2004 and Company Petition No.64 of 2004 filed under Sections 397 and 398 of the Companies Act before the Company Law Board.

111. Mr.Dwarkadas relied upon Tresories said Company Application No. 274 of 2004 in Company Petition No.43 of 2004 in support of his contention that there was collusion between Defendant Nos.1 and 2 and Defendant No.8 and others and that Defendant No.9

is only a front for Defendant No.1.

112. Neither Defendant No.1 nor Defendant No.2 have contended that they have absolutely nothing to do with Defendant No.8. Their group companies, in which Defendant No.6 and his group are also interested, have considerable business interaction with Defendant No.8. That by itself would not be indicative of any connection leading to an inference that the transaction was for the benefit or on account of Defendant No.1. Prima-facie Defendant No.1 and his group do not appear to be connected with Defendant No.9. Defendant No.9 is a part of the D.M. Kothari group which is itself a very large business group. None of the members of the group of Defendant No.1 are either shareholders or Directors of Defendant No.9. Even if they were, that by itself would not make any difference. Suffice it to state that there is nothing to suggest that Defendant No.9 is controlled by and/or connected with Defendant No.1 or his group.

113. Mr.Dwarkadas referred to the Plaintiff's affidavit in rejoinder dated 13.12.2004 in Notice of Motion No.3490 of 2004 to establish that Defendant No.9 was only a front for Defendant No.8. Paragraph 19(a) to 19(j) refer to certain facts which are the subject

matter of the dispute in respect of Defendant No.7 before the Company Law Board. They contain allegations to the effect that some of the properties of Defendant No.7 were purchased by Defendant No.1 through a nominee or a front company. This was denied by Defendant No.1. It appears that the purchase of the properties was funded by a group company, of Defendant no.1 Louisiana Investment and Finance Pvt. Ltd. No.1. Defendant No.1 however stated that the funding was on behalf of Dham Securities Ltd. Dham Securities Ltd. is a part of the Kothari group of companies of which Defendant No.9 is also a part. It was therefore contended that the purchase of the said properties of Defendant No.7 was also on behalf of Defendant No.1 in the name of Dham Securities Ltd.

114. These issues are being investigated by the Company Law Board.

115(a) In paragraph 19(k), the Plaintiff alleges that the issue of source of funds for the purchase of the said eighteen acres of land is an issue in the Company Law Board proceeding "as it appears that Defendant No.1 may have also funded the purchase of the trust properties by Defendant No.9." (emphasis supplied)

(b) Thus there is no evidence before me establishing that the said property was in fact funded by Defendant No.1. The Plaintiff has not adopted proceedings for further and better particulars in the present proceedings. In the circumstances, it is not possible in these proceedings to hold that the purchase of the property by Defendant No.9 was funded by Defendant No.1 even assuming that in the proceedings before the Company Law Board it is established that Defendant no.1 funded the purchase of another property.

116. It must however be noted that before the Company Law Board, the parties and in particular Defendant No.9 refused to give details of funding of the trust property on the ground that the issue is sub-judice in the present suit. That stand is wholly untenable. There is nothing in this suit that warrants such a stand being taken by any of the Defendants before the Company Law Board. It is made clear that the pendency of the present proceeding will not in any manner whatever affect the right of the parties or of the Hon’ble Company Law Board to investigate the matter if thought fit even in respect of the suit transaction. Suffice it to state that I do not find any evidence

before me at this stage to record a finding that the trust properties have been purchased by Defendant No.9 on behalf of or for the benefit of Defendant No.1.

117. It is true that Defendant No.8 did not sell the property by public auction. Nor did it issue any advertisement for the sale thereof. I will go to the extent of presumping in the Plaintiff's favour that Defendant No.9 was informed by Defendant Nos.1 and 2 regarding the proposed sale of the property by Defendant No.8. That by itself however would not entitle the Plaintiff to reliefs against Defendant No.9. That by itself would not establish that Defendant No.9 is a front for Defendant No.1. At the highest it would entitle the Plaintiff to contend that the sale was at an undervaluation. This grievance is taken care of by Mr.DeVitre's statement on behalf of Defendant No.9 to the effect that in the event of it being found that the property was sold at a undervaluation or in the event of the sale being finally held to be invalid, compensation / damages, if any, may be paid from out of the share of Defendant No.5 in the Trust. It is undisputed that the share of Defendant No.5 upon distribution would adequately cover any claim in this regard of the plaintiff.

RE. SUBMISSION NO.VII

(VII). The English ortgage is not attested by two witnesses and is therefore void in view of section 59 of the Transfer of Property Act.

118. The English mortgage was not challenged on this ground in the pleadings. In the facts and circumstances of this case, the point raises a mixed question of law and fact and not merely a question of law.

119. It is true that the execution clause does not indicate that the English mortgage was attested by two witnesses. The original was produced in court in view of Mr.Dwarkadas submission. Mr.Balsara however invited my attention to the reverse of the first page which bears the signatures of two persons who he stated were the attesting witnesses. He further submitted that the practice in the State of Karnataka often is that the documents are executed in the presence of a Registrar

and during the time of registration the witnesses witness not merely the registration but also the execution of the documents by the parties thereto who in turn execute the documents before the Registrar. This he says is what happened in the present case.

120. These are questions of facts. In the circumstances, it is not necessary for me to refer to the judgement of the Privy Council in AIR 1925 PC 203 and the judgement of this court of 7BLR934 which would undoubtedly have supported Mr.Dwarkadas's submission had the factual basis been pleaded and established.

. The Plaintiffs claim is fully protected not only in effect but even as prayed.

121. Though the interim reliefs sought in respect of the property are refused not only is the Plaintiffs right therein totally protected but in fact his suit stands virtually decreed if his challgenge to the mortgage and the sale thereof by Defendant no.8 to Defendant no.9 suceeds. Indeed the plaintiffs rights are secured even if he does not succeeded in respect of the reliefs prayed for but if he can establish that the sale by Defendant no.8 to Defendant no.9 was at an

undervaluation.

122. In prayer(e) to the plaint, the plaintiff has sought about twenty final and four interlocutory releifs pertaining to the said mortgaged property. By prayers (e) to (e)(ix)(e) every stage, from the creation of the said mortgages to the sale of the property by Defendant no.8 to Defendant no.9 has been challenged. The prayers are based on the averments in paragraphs 37 H and 37 I of the plaint. Prayers (e)(ix)(f) and (g) which follow are important in this regard and read as under :

> "(e)(ix)(f) In the alternative and in the event of this Hon'ble Court not granting the relief for setting aside and cancelling the said purported sale/conveyance dated 4th June, 2004 (Exhibit "CC-5(i)" hereto) then and in such event Defendant no.7 be ordered and decreed to pay to the Trust and the beneficiaries the amount of the value of the properties described in Exhibits CC-3 and CC-4 to the plaint as on 9th September, 2003, being the date of distribution specified in the Trust Deed of the said Trust, together with interest on the said amount at 18% per annum with yearly rests or at such other rate as this Hon'ble Court may deem fit and proper from the said date of distribution till payment.
>
> (e)(ix)(g) the Defendants nos.1, 2, 7 and 8 be ordered and decreed to pay to the trust such sum as may be determined by this Hon'ble Court after enquiry as damages for the loss and damage caused to the Trust on account of the sale of the properties described in Exhibits CC-3 and CC-4 to the plaint as on 9th September, 2003, being the date of

> distribution specified in the Trust Deed of the said trust, together with interest on the said amount oat 18% per annum with yearly rests or at such other rate as this Hon'ble Court may deem fit and proper from the said date of distribution till payment."

123. Mr.DeVitre, to dispel any apprehension about the property having been sold at an undervaluation, made a statement on behalf of Defendant No.5 that in the event of it being found that the property was sold at an undervaluation or in the event of the sale being held to be invalid finally, the Plaintiff may be compensated to any extent that may be determined by this Court from the share of Defendant no.5. According to the Plaintiff the property was sold at an undervaluation of about Rs.14.00 to Rs.15.00 crores. The Plaintiff's share to the extent of the undervaluation would be about Rs.5.5 crores. It is admitted that the trust funds available for distribution whether in cash or in specie will be more than adequate to satisfy the Plaintiffs claim in this regard from out of the share of Defendant No.5. Defendant Nos.3 and 4 have not made a similar offer/statement. However in such event it would be open to the Plaintiff to also make a claim against the share of Defendant Nos.3 and 4 if permissible in law.

Moreover Defendant nos.2, 3 and 4 can have no objection to this statement. Nor can they be entitled to claim any amount even if the plaintiff establishes that the mortgage or the sale was invalid or at an undervaluation as they have expressly affirmed the entire process.

124. Thus the plaintiffs right are totally secured. Indeed if the plaintiff establishes the facts pleaded, the decree sought albeit in the alternative in respect of the said property will be totally satisfied. Therefore even if the injunction sought is not granted the plaintiff would be in no worse a situation. Indeed he would be in a better position as Mr.DeVitre's statement protects the plaintiff even against undervaluation of the property simpilicitor to wit, even if the plaintiff does not establish that the transactions pertaining to the property were contrary to the deed of trust or in breach of trust. Thus if the plaintiffs were to succeed in establishing lack of authority or breach of trust or undervaluation, the alternative prayers reproduced above would be not only granted but fully satisfied.

125. There can be no possible exception on the plaintiff's part to the alternative prayer being granted instead of the other prayers. This is not a suit for specific performance in which the alternative prayer for money is in effect a subsidiary prayer reluctantly sought by the plaintiff where the primary prayer is for specific performance of the contract.

126. Even assuming that the plaintiffs demand or a distribution in specie is justified it will make no difference. For even in that event the plaintiff would not be entitled to any particular property. In other words, even if the properties of the trust are to be distributed in specie among the beneficiaries it is not necessary that the plaintiff would have come to his share the said 18 acres or even a part thereof. What the plaintiff will be entitled to on distribution whether in specie or in terms of money on a distribution upon the sale of all the assets of the trust would be in effect a monetary entitlement or an entitlement reducible to or translateable in monetary terms.

127. Thus whichever way I look at the matter I am convinced that in the present case though interim reliefs in respect of the property qua defendant nos.8

and 9 has been rejected the plaintiff has succeeded in having his interest totally and comprehensively protected.

O R D E R

128. In the circumstances, the following order is passed :-

(i). Mr.Justice Vaidyanathan (Retd. Judge, Bombay High Court) is appointed as Administrator of all the assets and affairs of the Raj Trust constituted under the Deed of Trust dated 10.9.1985 (hereinafter "the Trust") including the bank accounts of the Trust with authority to operate the same for all purposes mentioned in this order.

(ii). The Administrator shall take steps for realisation of the stock-in-trade consisting of unsold plots and other assets, owned by the Trust. The Administrator is entitled to appoint such persons as he may deem fit for the purpose of protection of the assets of the Trust. The Administrator is also at liberty to take assistance from

the Chartered Accountants and/or any legal advisers and/or any estate brokers/agents in the matter of disposal of the stock-in-trade.

(iii). The Administrator is also authorised to recover all receivables of the Trust by adopting appropriate proceedings and/or by taking such steps as he may deem fit.

(iv). After realisation of receivables as also the proceeds from disposal of the stock-in-trade, the Administrator is authorised to discharge all liabilities of the Trust that he considers proper after four weeks notice to the parties.

(v). It is clarified that any of the parties to the present proceedings by themselves and/or through their nominees are entitled to give their offer for purchase of any of the assets of the Trust against the payment of the full consideration amount. The disposal of the trust properties shall be subject to the sanction of this Court.

(vi). The Administrator is authorised to appoint such persons to execute sale deeds in favour of the purchasers of plots in the projects undertaken by the Trust and for which the purchasers have made full payment and also ensure that said sale deeds are duly registered.

(vii). The Administrator is authorised to take follow-up action in response to the notices issued by the authorities of Stamp and Registration and Defendant No.2 is directed to give necessary assistance in that respect to the Administrator.

(viii). The Administrator is authorised to appoint such person/s and/or agency for the purposes of statutory compliances, payment of taxes, drawing up the accounts and having them audited and for other administrative functions as the Administrator may deem appropriate.

(ix). The Administrator is authorized to appoint such persons as he may deem fit for

the purposes of formation of Jade Garden Annex Plot Owners Association of Phase 1, Phase 2, Phase 3 and Phase 4 respectively of Jade Garden Annex, Bangalore and hand over the management of the common area and maintenance to the said association subject to their complying with their obligations.

(x). Defendant No.1, Defendant No.2 and Defendant No.6 are directed to co-operate with the Administrator in the matters of discharge of functions as stated herein and shall give such requisite information in their possession and provide such documents as are in their possession to the Administrator as the Administrator may desire.

(xi). It is clarified that the Administrator shall be entitled to sell the immovable properties including the stock in trade of the Trust as stated in this order only for the purpose of discharging the office of Administrator including the discharge of the liabilities of the Trust.

(xii). The Administrator shall be entitled to identify any premises upto 500 sq.ft. carpet area to be used by him as an office in any part of Bangalore. The Administrator may consider utilizing any part of the trust property for the same.

(xiii). The Plaintiff shall in the first instance put the Administrator in funds as may be directed by the Administrator. The Plaintiff shall be entitled to reimbursement of such amounts from and out of the trust funds as and when available with the Administrator. The Administrator shall endeavour to reimburse the amounts as expeditiously as possible.

(xiv). The remuneration of the Administrator shall be fixed after a period of four weeks. The office is directed to produce the papers for the same on 18.12.2006.

(xv). Liberty to the parties to apply including for the distribution of corpus of the Trust.

(xvi). The statement made on behalf of Defendant No.5 namely that in the event of it being found that the property was sold at an undervaluation or in the event of the sale being held to be invalid finally, the Plaintiff may be compensated to any extent that may be determined by this Court from out of his share in the trust funds is accepted. Defendant no.5 shall be irrevocably bound by the same.

(xvii). All the above Notices of Motion are accordingly disposed of. No further reliefs in Notice of Motion No. 3490 of 2004.

(xviii). There shall be no order as to costs.